IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.6.2007
Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.12170 of 1994

1.R.Murali
2.R.Umamaheswari
3.K.K.Ramesh Babu
4.Tmt.K.Selvi .. Petitioners

vs

1.State of Tamilnadu rep., by
Secretary to Government
Education Department
Fort St.George, Madras 600 009.

2.The Vice-Chancellor
Tamil University
Thanjavur 5

3.The Registrar (Incharge)
Tamil University
Thanjavur 5

4.V.Kalaiselvi

5.S.Rajendran

6.P.Unnikrishnan

7.P.Madhusudhanan

8.Thiru K.Ramachandran

Respondents 4 to 8 impleaded
vide order dt.5.3.2002 in
WMP No.22496/95. .. Respondents

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Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus as stated therein.

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For Petitioners : Mr.R.Yashod Vardhan,
Senior counsel, for
Mr.K.Kannan.

For Respondents : Mrs.Geetha,
Govt. Advocate, for R1.

Mr.R.Swaminathan, for R2 & R3
& for R4 to R8.

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus calling for the records of the 3rd respondent relating to the communication in proceedings Na.Ka.A1/1086/90 dated 12.3.1994 along with the seniority list and quash the same and to issue Mandamus directing respondents 2 and 3 to follow the seniority list prepared and published in proceedings Na.Ka.A1/1086/90 dated 19.8.92.

2.The writ petition has been filed to quash the impugned seniority list by the writ petitioners who were appointed as Assistants by way of direct recruitment. Their grievance is that respondents 4 to 8 herein were not even qualified to be working as Assistants at a time when the petitioners joined duty as Assistants by way of direct recruitment. But by the impugned seniority list, respondents 4 to 8 were shown as seniors to the writ petitioners and the impugned seniority list has also proposed two categories of Assistants namely, (1)persons who has been in service right from the beginning and (2)the persons who have been fully qualified and the impugned seniority list sought to follow a ratio of 1:1 among the two categories of persons for promotion to the post of next category namely, Superintendent.

3.The facts are not in dispute. The 1st and 2nd petitioners joined the post of Assistant by way of direct recruitment in the year 1983 and petitioners 3 and 4 joined the post of Assistant by way of direct recruitment in the year 1985. They were all appointed by the newly formed Tamil University, Thanjavur, which was established on 15.9.1981 and the statute of the University came into effect on 28.5.83.

4.Prior to coming into force of the Statute, i.e., before 28.5.1983, the University appointed 6 Junior Assistants and two Stenographers. When the direct recruitment was made for the post of Assistants after the regulation came into effect, the University gave an option for the persons

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who were appointed as Junior Assistants in the year 1982 to be a conditional temporary Assistant or Junior Assistant subject to the condition that they should themselves get qualified within the specified time and if they did not acquire the qualification within the time, they would be reverted as Junior Assistants. The persons who opted for such a conditional appointment of temporary Assistant also gave their consent in writing and agreed to abide by the said condition. 6 Junior Assistants who were originally appointed in the year 1982 opted for the conditional appointment as temporary Assistant. Out of them only two persons, namely (1) Thiru A.Kalaimani and (2) Tmt.V.Kosalai qualified themselves and the other persons who did not qualify themselves were reverted. The Syndicate approved the resolution on 25.7.86 to revert the persons who did not fulfil the conditions.

5.On 19.12.1986, the Syndicate of the University passed a resolution relaxing the qualifications of the 4 temporary Assistants who were reverted as they did not fulfil the conditions to enable them to become Assistants. Thus all the 6 Junior Assistants who were appointed in the year 1982 were promoted as Assistants.

6.Problems arose when the University wanted to prepare a seniority list for the Assistants and therefore the 3rd respondent/Registrar of the university asked the opinion of the 1st respondent-Government. The 1st respondent replied that full membership can be conferred only after the relaxation orders were issued and the direct recruits could take their seniority on the date of joining. Thereafter the 3rd respondent published a seniority list of the Assistants dated 19.8.1992 in which the 1st petitioner was ranked as No.1, the 2nd petitioner was ranked as No.2 and the 3rd petitioner as No.10 and the 4th petitioner as No.7. The respondents 4 to 8 herein were placed at No.14,15,16,13 and 17 respectively. Thus all the petitioners were shown as seniors to respondents 4 to 8 herein. On the basis of the seniority list dated 19.8.92 petitioners 1 and 2 were called for an interview for the next post of Superintendents and they were also selected along with other 3 persons based on merit and seniority.

7.While so, the impugned seniority list was issued by the 3rd respondent after giving a go-by to the seniority list published on 19.8.1992. A number of objections were raised by the petitioners for the impugned seniority list but they were all rejected by the 3rd respondent by recommending two types of categories in the impugned seniority list namely, one for the persons working since 1982 and another for the persons who are fully qualified for the post of Assistants. Challenging the seniority list dated 12.3.1994 the above writ petition has been filed by the writ petitioners.

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8.A counter affidavit has been filed by the 3rd respondent/Registrar of the University wherein it was stated that with a view to enable the 6 Junior Assistants and 2 Stenographers who were appointed at the inception itself in the year 1982, the Syndicate passed a resolution dated 4.7.1983, relaxing the conditions as to the qualifications of the unqualified persons for the post of Assistants subject to their acquiring the requisite qualifications within a period of 3 years. It is admitted in the counter that only two of the persons so appointed had acquired the requisite qualifications within the stipulated period and others were reverted to the post of Junior Assistants. On 19.12.86, the Syndicate passed a resolution to regularise the services of the temporary Assistants from the date of the temporary appointments and the qualifications for the appointments for the post of Assistants were relaxed retrospectively. It is further stated by the 3rd respondent that the seniority list published on 19.8.92 was not in order and the same was published by the then Registrar without the approval of the Syndicate. Therefore it was decided to appoint a 4 member committee for the first time to draw a seniority list on some rational basis. The Committee so appointed recommended a formula which was placed before the Syndicate on 9.9.93. After calling for representations and objections from the persons concerned it was placed before the Syndicate on 4.2.94. The Syndicate appointed a sub-committee consisting of 3 Syndicate members to go into the various aspects of representations and objections. The Sub-Committee considered the matter on 10.2.94 and the list so approved was published by the 3rd respondent on 12.3.94. The Syndicate had also approved the action in this regard on 29.3.94. In such circumstances, according to the 3rd respondent, the seniority list which was prepared on the basis of the recommendations of the Committee cannot be described as illegal and arbitrary.

9.The petitioners filed a reply affidavit to the counter filed by the 3rd respondent reiterating their earlier contentions.

10.Initially the writ petition was filed against the State Government and the University alone and thereafter respondents 4 to 8 were impleaded as per order dated 5.3.2002 in WPMP No.22496/1995. The 6th respondent has filed a counter affidavit on behalf of respondents 4 to 8. It is their contention that their services were regularised with effect from 4.7.83 as per the decision of the Syndicate on 19.12.86. Thereafter, orders were passed on 24.3.87 for pay fixation with effect from 4.7.83. They contend that when the petitioners have not challenged their regularisation as Assistants with effect from 4.7.83, they could not challenge the impugned seniority list. According to respondents 4 to 8, they were appointed as

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Assistants with effect from 4.7.83, whereas the writ petitioners were appointed as Assistants at a later point of time. Therefore the seniority list dated 19.5.92 was rightly revoked and the new seniority list has been properly issued on the basis of the recommendations of the Committee.

11.Heard Mr.R.Yashodvardan, the learned Senior counsel for the writ petitioners and the learned counsel for the University who also appeared on behalf of respondents 4 to 8 and Mrs.Geetha, learned Government Advocate for 1st respondent. I have also perused the documents filed and the judgments referred to in support of their submissions.

12.The learned Senior counsel for the writ petitioners submitted that a peculiar situation has been created by the misdeed of the University by issuing the impugned seniority list according to which, the persons who did not even have the qualifications to be appointed as Assistants were shown as seniors to the writ petitioners at a time when the writ petitioners who were fully qualified were directly appointed to the post of Assistants. The learned Senior counsel submitted that when the unqualified persons were temporarily promoted as Assistants with conditions, only 2 out of 6 complied with the conditions and the remaining 4 persons did not do so. Therefore they were rightly reverted to the post of Junior Assistants. Thereafter the qualifications were relaxed and the services of all the 6 persons were regularised with effect from 4.7.83, which itself is illegal and unknown to service jurisprudence. However the learned Senior Counsel confined his submissions only to fixation of seniority by contending that the seniority of 2 persons who complied with the conditions should be fixed on the date when they obtained the necessary qualifications and the seniority of others should be fixed from the date i.e., on 19.12.86 when decision was taken to regularise their services with effect from 4.7.83 in the post of Assistants after relaxing the requisite qualifications. The learned Senior Counsel relied on the decision of the Hon'ble Supreme court reported in AIR 1986 S.C.1859 (Shitala Prasad v. State of U.P.) to submit that till the relaxation in the requisite qualifications was granted, the unqualified persons could not be even considered as an Assistant and such persons cannot claim seniority over the writ petitioners who possessed the requisite qualifications on the day when they joined the duty itself. He relied on another decision of the Supreme Court reported in AIR 2004 S.C. 3460 (Sanjay K.Sinha-II v. State of Bihar) to submit that while appointments could be regularised, the regularised appointees could not steal a march over the regularly appointed persons with full qualifications. The learned Senior counsel further relied on the decision of the Supreme Court reported in JT 2006(6)SC 190 (K.Malaimuthu & Anr., v. Stat of Tamil Nadu &

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Ors.) to urge that when a person is regularised with retrospective effect, the seniority should not be taken from the date of initial appointment and the seniority is to be decided from the date on which his services were regularised.

13.Per contra, the learned counsel appearing for the University as well as respondents 4 to 8 submitted that the act of the Syndicate on 19.12.1986 was only to undo the injustice caused to respondents 4 to 8 and having not challenged the same, the writ petitioners could not challenge the seniority list now. The learned counsel further submitted that as the list has been drawn on the basis of the recommendations of the expert committees, the same could not be easily interfered with.

14.In reply, the learned Senior counsel submitted that they are aggrieved only against the fixation of the seniority as per the seniority list which is impugned and relying on the decision of the Supreme court reported in AIR 2004 S.C. 746(Pramod K.Pankaj v. State of Bihar) submitted that when the objections raised after the final list was published, the same could not be rejected as time barred.

15.I have considered the rival submissions carefully with regard to facts and citations.

16.The following facts are undisputed and in fact admitted by all the parties.

17.The University was established on 15.9.1981 and the statute was given the Governor's assent on 8.3.1982 and the same was published in the gazette on 9.3.1982. On 19.3.82, a list was drawn from the Employment Exchange for appointing 6 Junior Assistants and 2 Stenographers and they were appointed on 22.3.82. The statute of the University came into force on 28.5.83.

18.On 2.6.1983 selection for the post of Assistant by direct recruitment was made by the University and the 1st petitioner joined as Assistant on 22.9.83. The 2nd petitioner joined the very same post on 9.11.83. It is also an admitted fact that petitioners 3 and 4 joined the service as Assistant in April 1985.

19.On 4.7.1983 the above said Junior Assistants were made as Assistants as per Syndicate decision on condition that they should acquire the qualifications prescribed for the post of Assistant within 3 years or

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else they would be reverted to the post of Junior Assistant. Only two of the Junior Assistants out of the 6 who were conditionally promoted on 4.7.83 acquired the qualification and on 8.1.85 one of the two acquired the qualification and on 4.5.85 the second person acquired the qualification. Thereafter these two persons were regularised in the post of Assistant with effect from 4.7.83. On 31.7.86, the remaining 4 Junior Assistants who were promoted conditionally on 4.7.83 were reverted to the post of Junior Assistants by the Syndicate as they failed to acquire the qualifications within the 3 year period. But on 19.12.86 Syndicate passed resolution relaxing the qualification and regularised the services of 4 persons who were reverted to the post of Junior Assistant on 31.7.86 with effect from 4.7.83 in the post of Assistants.

20.By letter dated 29.1.1991 the Registrar of the University requested the Secretary of the Education Department to advise the University with regard to fixation of inter se seniority of the Assistants appointed by direct recruitments, the Assistants who were conditionally promoted, and who subsequently complied with the conditions and the Assistants for whom the qualification was relaxed. To this letter dated 29.1.91, the Secretary, Education Department sent a reply stating that full membership can be conferred only after relaxation orders are issued with reference to merits of each case and therefore the Stenotypist would become eligible for seniority only after relaxation orders are issued. The Secretary further replied that there are direct recruits joined the services as a full-fledged members and therefore they can take the seniority on the date of their joining. Thereafter the University published a seniority list on 19.8.92 in which the petitioners 1 to 4 were shown in Sl.Nos.1,2,10 and 7 respectively. The respondents 4 to 8 herein were shown in Sl.No.14,15,16, 13 and 17 respectively. Thus all the petitioners herein were shown as seniors to respondents 4 to 8 herein.

21.It is the case of the University that the seniority list published on 19.8.1982 was published without properly considering the objections of the persons affected and the same was published without the approval of the Syndicate. Therefore a four-member group was set up on 24.12.92 and their recommendations were placed before the Syndicate on 9.9.93. On 4.2.94 the Syndicate appointed a sub-committee to consider the recommendations and the objections received to arrive at a solution. On 12.3.94 a new seniority list was published by the University on the basis of the recommendations of the sub-committee and this new list altered the seniority already fixed by the list dated 19.8.92. The new list has also prescribed a ratio of 1:1 between the qualified and unqualified candidates. In the new list, which is impugned in the writ petition,

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petitioners 1 to 4 were shown at Sl.Nos.3,4,11 and 7 respectively under the heading fully qualified persons. The respondents 4 to 8 were shown as Sl.Nos.1 to 5 under the heading candidates who have been serving right from the beginning.

22.In the light of the above, the only question that arises for consideration is whether the respondent-university has correctly fixed the inter se seniority of the persons working as Assistants in the impugned list by scrapping the earlier list dated 19.8.1992.

23.The respondents 4 to 8 herein along with other two persons were originally appointed to the post of Junior Assistants that too before the University statute came into force. As per the University statute there was no post of Junior Assistant and it is an admitted position that these Junior Assistants did not have the qualification prescribed by the University for the post of Assistant. The petitioners 1 and 2 were appointed as Assistants by direct recruitment on the basis of the service regulations and it is an admitted position that they are all fully qualified persons. The 1st petitioner joined as Assistant on 22.9.83, the 2nd petitioner on 9.11.83 and they have been working in the capacity with the requisite qualifications. Prior to their appointments by direct recruitment, on 4.7.83, the University conditionally promoted the 6 Junior Assistants with a condition that they should acquire the requisite qualification within 3 years, failing which they will be reverted to the post of Junior Assistants.

24.Even though the Junior Assistants were conditionally promoted on 4.7.83 itself, they worked on and from that date as Assistants without having the requisite qualification, that too, not in a regular service. Whereas petitioners 1 and 2 were working as Assistants in a regular service with the requisite qualifications on and from 22.9.83 and 9.11.83 respectively. Therefore the services rendered by the petitioners are with the requisite qualifications as per the statute of the University, while the services rendered by the 6 Junior Assistants, who were conditionally promoted on 4.7.83, are without the requisite qualification and in fact they were not at all considered to be Assistants as per the university statute during that period. In such circumstances, it is unfair to consider the unqualified persons as seniors to the persons who were regularly appointed with the requisite qualifications as per the statute of the University.

25.It is true that two of the Junior Assistants who were promoted temporarily acquired the requisite qualifications in the year 1985 and their services were regularised with effect from 4.7.83. But it does not

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mean that they can steal a march over the regularly appointed and fully qualified Assistants. Further, with regard to the other persons, who were conditionally appointed as Assistants, they were in fact reverted to the post of Junior Assistants on 31.7.86 by the Syndicate as they did not comply with the conditions of acquiring the requisite qualifications within a period of 3 years. They continued in the reverted post till 19.12.86 on which date the Syndicate passed a resolution relaxing the qualifications and regularising them in the services of Assistant with effect from 4.7.83. The respondents 4 to 7 herein were such of those persons who were conditionally promoted and thereafter reverted and further regularised as Assistants with effect from 4.7.83 by relaxing the requisite qualification. In such circumstances, it is also unfair to treat these people as seniors in the post of Assistants against the persons who were regularly appointed to the post of Assistants as per the statute much before respondents 4 to 7 were regularised.

26.Therefore I find that the grievance of the writ petitioners as genuine and well-founded and I am of the considered view that impugned seniority did not fix the inter se seniority list properly as per the settled principles of service jurisprudence.

27.A perusal of the impugned seniority list would reveal that it has two categories of Assistants, namely (1)those who were in service before the University statute came into force, who did not have the requisite qualification and (2)those who are fully qualified persons. The writ petitioners 1 and 2 are shown as juniors to 2 of the Assistants who were conditionally promoted as Assistants and who did not have the requisite qualifications during the relevant time. They acquired the qualification much later, i.e., only in 1985, whereas the writ petitioners 1 and 2 were directly recruited to the post of Assistant in the year 1983 itself in due compliance with the provisions of the statute. Therefore the fixation of seniority of the Assistants in the category of fully qualified persons is not correct and the same is to the detriment of the writ petitioners 1 and 2.

28.It is also not in dispute that the statute is silent with regard to fixation of inter-se seniority and that is why the then Registrar sought the advice of the Government/1st respondent by letter dated 29.1.1991 by pointing out that on matters not specified in the service statute of the University, such rules governing the service of Tamil Nadu Government shall apply unless otherwise decided by the Syndicate. On the basis of the clarification given by the 1st respondent in his letter dated 20.12.91, a seniority list was published on 19.8.92 duly showing the petitioners as seniors to respondents 4 to 8 herein.

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29.But the impugned seniority list now classified two categories of Assistants and in the unqualified category, respondents 4 to 8 were placed in the first five positions. Further, a ratio of 1:1 is fixed between these two categories which means the first petitioner was shown in Sl.No.3 under the fully qualified category, for all practical purposes he would be in Sl.No.6 and the 2nd petitioner who was in Sl.No.4 in the qualified category would actually be in seniority No.8 for all practical purposes, resulting in some of the unqualified persons for whom the qualification was relaxed would get seniority over the fully qualified directly recruited persons. Therefore the impugned seniority list has been published much to the detriment of the fully qualified and directly recruited persons which cannot be permitted under the service jurisprudence. The endeavour and emphasis on the part of the University seems to be to consider sympathetically the persons who were appointed prior to the formation of the University as Junior Assistants at the cost of directly recruited Assistants in terms of the statute of the University. While the court cannot object to the sympathetic consideration of the University shown to the Junior Assistants in regularising services in the promoted post of Assistant, the court cannot, certainly, permit injustice being caused to the regularly and directly appointed Assistants on the basis of the statute of the University.

30.In AIR 1986 S.C. 1859 (cited supra), the Hon'ble Supreme court held that till the exemption is granted, the person is not qualified to be appointed as he would be lacking in the basic qualification for being appointed. Until exemption is granted, the person was not considered to be as the person he was and the disqualification would be removed only when the exemption is granted. Such persons could claim seniority over the other persons who possessed the requisite qualifications and became regularly and lawfully appointed to the post much prior to the unqualified persons. The relevant portion reads as under:

> "7.Thus it is clear that the Board was not inclined to grant the exemption to the appellant and had insisted on the appellant securing the requisite qualification by appearing in an examination, from an appropriate institution. The Board was disinclined to grant the request till late 1962. When this is the factual position, how can the appellant contend that the Board must be deemed to have granted the exemption from the date of his application i.e., November 4, 1960? in this factual backdrop it is futile to contend that the Board had granted exemption with retrospective effect

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or that the exemption must relate back to the date of the making of the application. Besides, the language of S.16E of the Act does not admit of the construction canvassed on behalf of the appellant viz., that the Board can grant exemption with retrospective effect. It is in terms provided that the exemption may be granted by the Board only after considering the report of the Director having regard to the experience, education and other attainments of the person sought to be appointed. It would be reasonable to construe the section as enabling the Board to exercise the power to grant exemption prospectively after considering the report and taking into account the relevant circumstances which would by the very nature of things be with prospective effect and not with retrospective effect. To accede to the construction canvassed on behalf of the appellant would be to hold that any unqualified person can be appointed even without the minimum qualification subject to post facto exemption being granted. Till the exemption is granted the person is not qualified to be appointed. In other words he would be lacking in the basic qualification for being appointed. This deficiency cannot be made good with retroactive exemption unless the provision itself expressly or by necessary implication contemplates such a course of action. S.16-E does not satisfy this test. Thus it would appear that retrospective exemption could not have been granted and in point of fact was not granted in the present case. Even otherwise, it is not sufficient to show that retrospective exemption could have been granted. It must also be shown that retrospective exemption was in fact granted. In the present case the factual background clearly shows that the Board had not granted retrospective exemption. In fact the Board was not inclined to grant the exemption at all and was insisting that the appellant should obtain the requisite qualification. And the Board finally made up its mind to grant exemption only on July23, 1963. Unless the view is taken that whenever exemption is granted it must be treated as having been granted with retrospective effect, if there is such power, the

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appellant cannot succeed. There is no warrant in law or logic for taking such a view. The High court was therefore properly justified in repelling the contention urged on behalf of the appellant and in dismissing the Writ Petition.

8.There is also one more dimension of the matter. Though the appellant was working as a lecturer, it was not under any authority of law for there is no provision which empower the college to allow any unqualified person to teach or to appoint him as such in anticipation of his disqualification being removed in future. Till the exemption was granted appellant was not even a teacher in the eye of law though he was allowed to teach by the indulgence of the college authorities. The disqualification was removed only on July 23, 1963 when the Board granted the exemption . How could he have claimed seniority vis-a-vis respondent Nos.5 and 6 who possessed the requisite qualification; and became regularly and lawfully appointed teachers much prior thereto?

9.An employee must belong to the same stream before he can claim seniority vis-a-vis others. One who belongs to the stream of lawfully and regularly appointed employee does not have to contend with those who never belonged to that stream, they having been appointed in an irregular manner. Those who have been irregularly appointed belong to a different stream,and cannot claim seniority vis-a-vis those who have been regularly and properly appointed, till their appointments became regular or are regularized by the appointing authority as a result of which their stream joins the regular stream. At that point of confluence with the regular stream, from the point of time they join the stream by virtue of the regularisation, they can claim seniority vis-a-vis those who join the same stream later. The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue. On principle the appellant cannot therefore succeed. What is more in matters of seniority the Court does not exercise jurisdiction akin

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to appellate jurisdiction against the determination by the competent authority so long as the competent authority has acted bona fide and acted on principles of fairness and fairplay. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the Court will not overturn the determination unless it would be unfair not to do so. In any view of the matter the appellant who did not even belong to the stream of regularly (he was allowed to teach only in an irregular and unauthorized manner) and lawfully appointed lecturers cannot claim seniority against any one already in the stream before he joined the stream himself. The view taken by the High court is unexceptionable."

31.In AIR 2004 SC 3460 (cited supra), the Hon'ble Supreme Court held that appointments made contrary to the rules do not confer benefit of seniority on such appointees over and above the substantive appointees to the service.

32.In JT 2006(6) SC 190(cited supra) the Hon'ble Supreme court held that on the strength of the order giving retrospective effect to the regularisation of the promotees, they could not be placed in the seniority list over and above the appointees who are appointed by direct recruitment, as until the appointment is regularised, the appointees cannot be said to be in service. The relevant portion reads as under:

"24.On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view appears to be the one canvassed on behalf of the appellants, the decisions cited by Mr.Rao have been rendered in the context of Rule 10(a)(i)(1) and the other relevant rules which are also applicable to the facts of the instant case. Apart from the above, the law is well established that initial appointment to a post without recourse to the rules of recruitment is not an appointment to a service as contemplated under Rule 2 (1) of the General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a

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post borne on the cadre of such service. In fact, Rule 39(c) of the General Rules indicate that a person temporarily promoted in terms of Rule 39(a) is required to be replaced as soon as possible by a member of the service who is entitled to the promotion under the rules. It stands to reason that a person who is appointed temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time as his appointment is regularized. It, therefore, follows that it is only from the date on which his services are regularized that such appointee can count his seniority in the cadre.

25.In the instant case the authorities, on the strength of the several Government Orders giving retrospective effect to the regularisation of the promotees, have taken the date of initial appointment of such promotees as the starting point of their seniority. In our view, such a course of action was erroneous and contrary to the well established principles relating to determination of seniority. In our view, the High court took an erroneous view in the matter in applying Rule 4 of the General Rules and holding that the period during which the promotees had initially discharged the duties of District Registrars, though appointed temporarily under Rule 10(a)(i)(1), was to be counted for determining their seniority. The decision of this court in the case of L.Chanderkishore Singh (supra) relied on by Shri Venkataramani, did not involve the question of persons appointed outside the service as a stop-gap arrangement. The fact situation of the said decision is different from the fact situation of the instant case which finds support from the decisions cited by Mr.Rao.

26.We, therefore, set aside the order passed by the High court and direct the concerned respondents to redetermine the seniority of the appellants in relation to the promotees after reckoning the starting point of seniority of such promotees from the date on which

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> their services were regularised and not from the date of their initial appointment under Rule 10(a)(i)(1) of the General Rules."

33.In the light of the judgments of the apex court also the impugned seniority list would not stand the scrutiny of law as it sought to give seniority to unqualified persons who were conditionally and temporarily promoted to the post of Assistants over and above the regularly and directly appointed Assistants.

34.But the learned counsel for the University and the respondents 4 to 8 seriously contended that having not challenged the orders of the University, regularising the services of the Junior Assistants with effect from 4.7.83 and relaxing the necessary qualification for the unsuccessful Junior Assistants, it is not open to the writ petitioners to challenge the seniority list, that too, at a belated stage.

35.I am unable to accept the contention of the learned counsel for the respondents. It is conceded by the learned Senior counsel for the writ petitioners that they are not challenging the regularisation nor the relaxation given to the unqualified persons and the writ petitioners are aggrieved only by the inter-se seniority fixed by the University in the impugned seniority list. Further as soon as the seniority list was published on 12.3.94, the writ petitioners approached this court on 13.7.94 and in such circumstances, it cannot be contended that the writ petitioners approached court at a belated stage.

36.In AIR 2004 SC 746 (cited supra) the Hon'ble Supreme Court held as follows:

> "27.Submission of Mr.Pandey to the effect that the appellants had filed objections after a final gradation list was published on 22.12.1992 cannot be accepted. If a gradation list was published by an authority relying on or on the basis of criteria which was illegal, the seniority list issued pursuant thereto or in furtherance thereof must necessarily fall."

37.Therefore, I do not find any merits in the contentions of the respondents that the writ petitioners are trying to unsettle the settled matters.

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38.In the result, the impugned seniority list is vitiated and the same is set aside. Consequently the seniority list published on 19.8.92 is restored.

39.It is made very clear that this seniority list published on 19.8.92 must be the basis for determining the seniority for the Assistants for their further promotion in their service. Even if some of the persons move to further categories, during the pendency of the writ petition, their seniority is to be decided on the basis of the seniority list published on 19.8.92 for all purposes.

40.Therefore the writ petition is allowed as prayed for. No costs. W.M.P.No.18385/1994 is closed.

sks

Sd/
Asst. Registrar

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Sub Asst.Registrar

To
1.State of Tamilnadu rep., by
Secretary to Government
Education Department
Fort St.George, Madras 600 009.

2.The Vice-Chancellor
Tamil University
Thanjavur 5

3.The Registrar (Incharge)
Tamil University
Thanjavur 5
+ One cc to mr. K. Kannan Advocate SR 36657
+ One cc to Mr. R. Swaminathan, Advocate sR 36566
MBS (co)
sg 5/7/07

Pre-delivery order,
W.P.12170/94.
21.6.07

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